

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 MARGUERITE L. MARTIN II,

6 Plaintiff,

7 v.

8 UNITED STATES OF AMERICA, et al.,
9

10 Defendants.

Case No. C19-9RSM

ORDER OF DISMISSAL UNDER RULE
4(m)

11 This matter comes before the Court *sua sponte*. Plaintiff Marguerite L. Martin II filed
12 her Complaint on January 4, 2019, against Defendants the United States of America and the
13 State of Washington. Dkt. #1. On March 22, 2019, the Court issued an Order granting an
14 extension of time for Plaintiff to serve Defendants and an extension of time for the Court's
15 deadlines set forth in the prior Order Regarding Initial Disclosures and Joint Status Report.
16 Dkt. #53. The Court stated as follows:
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18 The Court believes from the record that Plaintiff has failed to
19 properly serve Defendants. Plaintiff is advised to review the
20 requirements in Federal Rule of Civil Procedure 4(i) for service the
21 United States and 4(j) for service on a state government. Under
22 Rule 4(m), service is required within 90 days after the Complaint
23 was filed in this case. Because that deadline is quickly
24 approaching, and because of Plaintiff's medical condition, the
25 Court will now extend this deadline by an additional 30 days.
26 There will be no further extensions. . . . The deadline for service is
27 now May 4, 2019. Failure to properly serve a Defendant by this
28 date may result in dismissal of all claims against that Defendant.

Dkt. #53 at 2. Since that time, Defendant State of Washington has made an appearance through
counsel from the state Attorney General's Office. Dkt. #64. Defendant United States of
America has not appeared.

1 On June 20, 2019, Plaintiff Martin filed a purported Joint Status Report. Dkt. #66. This
2 was not a *joint* status report as no other party signed it or participated in its drafting. Ms. Martin
3 begins the status report by stating she has received correspondence from an assistant attorney
4 general for the State of Washington indicating that they had received the summons and
5 complaint by mail but that “the state does not consider this form of service to be proper” under
6 Rule 4(j)(2). *Id.* at 1. Plaintiff Martin indicates that she mailed summonses to both Defendants
7 but does not provide further details. *Id.* at 2.

9 On July 2, 2019, the Court issued an Order to show cause why this case should not be
10 dismissed for failure to serve. On July 16, 2019, the Court received a Response from Plaintiff
11 Martin. Ms. Martin indicates she served both Defendants by mail. Dkt. #69 at 1. She attaches
12 certified mail receipts addressed to the United States Attorney General’s office in D.C. and the
13 Washington State Attorney General’s office in Seattle. *Id.* at 4–5. She provides no other
14 evidence of service.

16 Under Federal Rule of Civil Procedure 4(i), to serve the United States a party must mail
17 a copy of the summons and complaint to the Attorney General in D.C. and either deliver a copy
18 to the local U.S. Attorney’s office for the district or mail that office a copy. Plaintiff Martin has
19 sent the summons and complaint to D.C. but not the local U.S. Attorney’s office. Accordingly,
20 the United States has not been properly served and has no obligation to appear in this case.

22 Federal Rule of Civil Procedure 4(j)(2) states that to serve a state, such as the State of
23 Washington, a party must either deliver a copy of the summons and complaint to its chief
24 executive officer or serve a copy in the manner prescribed by that state’s laws for serving such a
25 defendant. Plaintiff Martin has submitted no evidence of delivering a copy to the chief
26 executive officer. Washington State law requires a party to serve the state by personally serving
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28

1 the attorney general, “or by leaving the summons and complaint in the office of the attorney
2 general with an assistant attorney general.” RCW 4.92.020. As this Court has noted in prior
3 cases, service by certified mail is not sufficient under Rule 4(j)(2) or RCW 4.92.020. *See Reyes*
4 *v. Fircrest Sch.*, 2012 U.S. Dist. LEXIS 107822, *7, 2012 WL 3144915 (W.D. Wash. August 1,
5 2012).

6
7 Federal Rule of Civil Procedure 4(m) states in part:

8 If a defendant is not served within 90 days after the complaint is
9 filed, the court—on motion or on its own after notice to the
10 plaintiff—must dismiss the action without prejudice or order that
11 service be made within a specified time. But if the plaintiff shows
good cause for the failure, the court must extend the time for
service for an appropriate period.

12 Fed. R. Civ. P. 4(m).

13 The Court has repeatedly warned Ms. Martin that service has not been proper in this
14 case and directed her to carefully examine Rule 4 before proceeding. The Court has already
15 granted Ms. Martin extra time to serve. Although the Court is aware of Ms. Martin’s medical
16 condition and her pro se status, she has given the Court no valid reason to continue to grant
17 extensions to serve Defendants. Given all of the above, dismissal of this case is now warranted.
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19 Accordingly, the Court hereby finds and ORDERS:

- 20
21 1) Plaintiff’s claims are DISMISSED without prejudice under Rule 4(m).
22 2) This case is CLOSED.

23
24 DATED this 5 day of August, 2019.

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27 RICARDO S. MARTINEZ
28 CHIEF UNITED STATES DISTRICT JUDGE